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13 **BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

14 Application of Cellco Partnership d/b/a Verizon
15 Wireless for approval of a transfer of Eligible
16 Telecommunications Carrier designation from
17 WWC License, LLC to Cellco Partnership
18 d/b/a Verizon Wireless.

Docket No. 10-09007

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25 **REGULATORY OPERATIONS STAFF'S ANSWER AND COMMENTS**

26 The Regulatory Operations Staff ("Staff") of the Public Utilities Commission of Nevada
27 ("Commission") hereby submits its Comments pursuant to the Notice Application to Transfer
28 Designation as an Eligible Telecommunications Carrier ("ETC") and Notice of Pendency of Hearing
("Notice") issued by the Commission in Docket No. 10-09007 on September 22, 2010.

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35 **STAFF'S RECOMMENDATION**

36 Staff, at this point, recommends that the Commission deny the Application of Cellco
37 Partnership and its Subsidiaries and Affiliates ("Cellco") to Amend Eligible Telecommunications
38 Carrier Designation in the State of Nevada ("Application"), for a number of legal and policy based
39 reasons which will be outlined hereafter. Staff is willing to reconsider the recommendation based on
40 information produced in the discovery process and further negotiations, but at this point, Staff
41 believes the Application should be denied by the Commission.

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48 **1. Application Insufficiencies**

49 The Application in the present Docket, filed September 10, 2010 is vague and misleading.
50 While styled as an Application to Amend ETC Designation, the Application is, for the most part, an
51 Application for a new ETC Designation. Cellco has requested the Commission amend the ETC

1 status held by WWC License, LLC ("WWC"). Cellco requests expanding its authority to its existing
2 subscribers and facilities, but not to expand WWC's current designated ETC area. To be fair, there is
3 an element of amendment of WWC's ETC designation in the Application regarding the remaining
4 portions of WWC's network; however, the largest portion of the requested ETC designation concerns
5 network infrastructure previously owned by Cellco and for which Cellco has never been designated
6 as an ETC. Staff presents the following factual summary to aid the Commission.

7 **a. Factual Summary**

8 Designation as an ETC entitles a carrier to access to federal and state funds for supporting its
9 basic network services provided in Nevada.¹ The support provided to an ETC must only be used by
10 the ETC for supported services.² It should be noted that Cellco has not requested state universal
11 service funds as part of the Application.

12 The Commission has prescribed requirements in regulation in order for telecommunications
13 entities to become ETCs in Nevada.³ Designation of an ETC in areas served by rural telephone
14 companies must be found to be in the public interest by a designating state.⁴

15 WWC was granted ETC status in Nevada in Docket No. 00-6003, and expanded its ETC
16 designation in Docket No. 04-3030. WWC⁵ was the only competitive ETC ("CETC") authorized to
17 operate in rural areas of Nevada until Commnet of Nevada, LLC was designated as an ETC in rural
18 exchanges of Nevada.⁶ Staff supported the designation of these CETCs for similar reasons, and in
19 particular, because the rural areas of Nevada have sparse cellular coverage outside of cities and fewer
20 wireline options.

21 Cellco, on the other hand, has been providing cellular service to rural Nevadans for years,
22 without ever applying for ETC designation. In fact, when Cellco acquired Alltel⁷, the Federal

23 ¹ See Nevada Administrative Code ("NAC") 704.680464.

24 ² 47 CFR 54.7 states "A carrier that receives federal universal service support shall use that support only for the
25 provision, maintenance, and upgrading of facilities and services for which the support is intended."

26 ³ See NAC 704.680461.

27 ⁴ See 47 CFR 54.201(c).

28 ⁵ WWC was acquired by Alltel Corporation ("Alltel") pursuant to a merger agreement signed January 9, 2005, and
thereafter became a wholly owned subsidiary of Alltel. However, as WWC continued to operate under its own name, and
Alltel had no preexisting customers in Nevada, the ETC designation remained with WWC.

⁶ See Compliance Order Docket No. 08-12017 (issued March 2, 2009) & Compliance Order 10-01011 (issued April 6,
2010).

⁷ The Agreement and Plan of Merger was entered into on June 5, 2008.

1 Communications Commission ("FCC") required Cellco/Alltel to "divest" the assets of one or the
2 other of the companies in several areas because of concerns regarding potential monopolization of
3 market share. In Nevada, those areas included Elko County, Eureka County, Lander County, White
4 Pine County and Lincoln County (hereinafter referred to as the "divested area"). Cellco/Alltel sold
5 off all of WWC's preexisting customers, network infrastructure and retail outlets in the divested area
6 (which were designated through WWC for ETC high cost support) to AT&T Mobility, leaving only
7 Cellco's preexisting customers, network infrastructure and retail outlets in said counties (which have
8 never been designated for ETC high cost support). This left Cellco/Alltel with a customer base and
9 infrastructure in the divested area not designated as an ETC.

10 In the remaining areas where WWC had designation as an ETC and preexisting customers,
11 network infrastructure and retail outlets, (Churchill County, Humboldt County, Pershing County,
12 Esmeralda County, Mineral County and Nye County, hereinafter referred to as the "non-divested
13 area"), Cellco also had preexisting customers, network infrastructure and retail outlets, but the
14 potential combined customer base was not a large enough proportion of the market share to cause the
15 FCC to order divestiture. Cellco was not designated as an ETC in these counties either.

16 In the present Application, Cellco asks this Commission to "Amend" WWC's previous ETC
17 Designation to be in Cellco's name. The Application asks for this amendment not only where
18 WWC's preexisting customers, network infrastructure and retail outlets are now owned by Cellco and
19 operating under the Cellco name (the non-divested area), but also for designation for high cost
20 purposes of all of Cellco's preexisting customers, network infrastructure and retail outlets in the non-
21 divested area. Even more egregious a misrepresentation, Cellco asks this Commission to "Amend"
22 WWC's previous ETC Designation to be in Cellco's name and cover all of Cellco's preexisting
23 customers, network infrastructure and retail outlets in the divested areas as well. What Cellco does
24 not make clear is that this amendment would effectively grant Cellco ETC designation where there
25 are no vestiges of WWC's preexisting customers, network infrastructure and retail outlets remaining,
26 within the divested area, as all of those customers/assets have all been sold to AT&T Mobility.

27 While changing the designation from WWC to Cellco could, possibly, be deemed an
28 "Amendment of ETC Designation" for WWC's preexisting customers, network infrastructure and

1 retail outlets which are now operating under the Cellco name, clearly, it is not an “Amendment” of
2 ETC Designation for all of Cellco’s preexisting customers, network infrastructure and retail outlets,
3 as these customers and facilities were never granted ETC designation, whether in Counties where
4 WWC remains or in the divested areas. Requesting ETC Designation and eligibility for high cost
5 support for all of Cellco’s preexisting customers, network infrastructure and retail outlets in Counties
6 where WWC remains and in the divested areas is, in truth, a request for new ETC Designation and
7 should be presented as such in the Application. Cellco’s failure to clearly present this expanded
8 request for authority in its Application is extremely misleading. More importantly, as discussed
9 below, given the nature of the true request from Cellco for designation of all of its customers, the
10 Commission needs to be aware that such a designation will have an impact on the other CETC
11 designated in Nevada, Commnet, as well as on future funding available to all CETCs in Nevada.

12 Instead, it is hidden within the Application. The only reference that Cellco seeks to request
13 high cost support for all of its lines occurs on the third page of the Application, in a seemingly casual
14 sentence. However, not only does Cellco seek ETC designation for all of its preexisting customers,
15 facilities, retail outlets and infrastructure in the areas where WWC held such designation, including
16 the areas where the FCC forced Cellco to sell off all of WWC’s assets, but it is Staff’s understanding
17 that Cellco is already reporting all of its lines as eligible for ETC support to the federal Universal
18 Service Administrative Company (“USAC”)⁸, the administrator of the Universal Service Fund. In
19 essence, Cellco appears to believe it can receive ETC support for all of its lines without Commission
20 designation.

21 **2. Notice Insufficiencies**

22 The Notice issued in the present Docket on September 22, 2010, gives adequate notice to the
23 public about what, on its face, the Application requests, a “transfer” of ETC designation from WWC
24 to Cellco. However, because the Application itself is so vague and misleading, the Notice does not,
25 in fact, give the general public notice that Cellco is requesting ETC designation and high cost support
26 eligibility for all of its preexisting network infrastructure and assets that had never received ETC

27 ⁸ Staff has been provided a letter from Verizon Wireless to USAC indicating that Verizon Wireless has included all lines
28 under common ownership or control in the Alltel designated areas in its September 30, 2009, Form 525 Line Count
Filings.

1 designation. The Application itself was so vague that Staff was unsure what was being requested
2 and, within a matter of days of the filing, Staff had to issue 30 data requests to attempt to determine
3 what the Application was, in fact, seeking.⁹ Staff is concerned that although the Notice is a fair
4 depiction of what the Application purports to be, given the poor quality of the Application, interested
5 persons are not advised by the Notice of how the actual outcome of the this proceeding might affect
6 their interests.

7 Further, the Notice issued does not indicate that the expansion of ETC coverage to all of
8 Cellco's assets in WWC's designated areas would lower the amount of high cost support available to
9 Nevada's other competitive ETC providers.¹⁰ In its March, 2008 Order on High Cost Universal
10 Service Support, the FCC imposed an interim cap on federal CETC high cost support.¹¹ The cap
11 limits the annual amount of support to CETCs in each state to the annualized amount CETC's were
12 eligible to receive during March 2008. Because the FCC has capped the amount of high cost USF
13 funds available to each state, and because the state by state capped funds are divided based on the
14 number of access lines (phone numbers) each designated ETC is serving, expanding a designation in
15 the manner Cellco is requesting could potentially shift the distribution of the capped funds between
16 the competitive ETCs and alter the amount of support received by any other ETC in Nevada.¹² The
17 Application, as it is in material part a request for new ETC designation, should have been Noticed as
18 such, thus giving the general public actual notice of what was being requested in the Application.

19 In addition, the FCC has given state commissions guidance on what to consider when
20 evaluating Applications for new ETC designation; standards that should be applied in the present
21 Docket. The Application does not adequately address these standards, which are explained in further
22 detail below.

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24 ⁹ The data requests have not been returned, the due dates for response is October 14-15, 2010, following the deadline for
25 comments. To its credit, Cellco has been diligently working with Staff, through email and phone correspondence, to
allow Staff a sufficient understanding of the filing to file these comments.

26 ¹⁰ Currently, Commnet is the only other designated ETC that is eligible for high cost USF support in Nevada.

27 ¹¹ See IN THE MATTER OF HIGH-COST UNIVERSAL SERVICE SUPPORT FEDERAL-STATE JOINT BOARD ON
UNIVERSAL SERVICE ALLTEL COMMUNICATIONS, INC., ET AL. RCC MINNESOTA, INC. AND RCC
ATLANTIC, INC. NEW HAMPSHIRE ETC DESIGNATION AMENDMENT, 23 F.C.C.R. 8834, 8839 (2008).

28 ¹² Cellco has indicated, in a telephone conference with Staff on October 8, 2010, that their preliminary estimate of access
line numbers would only raise the access lines from approximately 40,000 to "the mid- to high forty thousand area" but
the actual number of access lines for which Cellco would seek high cost USF support has not yet been provided to Staff.

1 **3. FCC Requirements for New ETC Designation**

2 In the decision, IN THE MATTER OF FEDERAL-STATE JOINT BOARD ON
3 UNIVERSAL SERVICE, 20 F.C.C.R. 6371, 20 FCC Rcd. 6371 (F.C.C.), (2005), the FCC, though
4 not binding on the States, issued recommendations on what standards should be applied when
5 evaluating a request for new ETC designation. State commissions are charged with reviewing ETC
6 designation applications for compliance with 47 U.S.C. § 214(e)(1). 20 F.C.C.R. 6371, 6378. In
7 addition, the FCC conducts a public interest analysis for ETC designations, which includes an
8 examination of (1) the benefits of increased consumer choice, (2) the impact of the designation on the
9 universal service fund, and (3) the unique advantages and disadvantages of the competitor's service
10 offering. The FCC further encourages state commissions to require ETC applicants over which they
11 have jurisdiction to meet these same conditions and to conduct the same public interest analysis. Id
12 at 6379.

13 The FCC equates the importance of the public interest tests with the Telecommunications Act
14 itself, stating, in pertinent part:

15 The public interest benefits of a particular ETC designation must be
16 analyzed in a manner that is consistent with the purposes of the Act itself,
17 including the fundamental goals of preserving and advancing universal
18 service; ensuring the availability of quality telecommunications services at
19 just, reasonable, and affordable rates; and promoting the deployment of
advanced telecommunications and information services to all regions of
the nation, including rural and high-cost areas. Id. At 6388.

20 **a. The Benefits of Increased Consumer Choice**

21 Even a cursory glance at the present Application shows those public interest tests are not met.
22 The requested designation will not increase consumer choice. Cellco has been offering service in the
23 requested areas for years and has done so without any high cost support.

24 **b. The Impact of the Designation on the Universal Service Fund**

25 The largest problem is the potential impact of the requested designation on the universal
26 service fund. As mentioned above, because the FCC has capped the amount of high cost USF funds
27 available to each state, and because the state by state capped funds are divided based on the number
28 of access lines (phone numbers) each designated ETC is serving, expanding a designation in the

1 manner Cellco is requesting could potentially shift the distribution of the capped funds between the
2 competitive ETCs and alter the amount of support received by any other CETC in Nevada. By
3 adding Cellco lines to the WWC ETC line count reported for support and thereby increasing support
4 payments to Cellco, CETC support will be diluted in Nevada. The only other CETC will receive less
5 federal high cost support. Less support may decrease investment by the remaining CETC in its
6 facilities serving rural areas of Nevada.

7 The impact on the USF would, in fact, be greater than even that. The FCC ordered Cellco,
8 when approving the acquisition of Alltel, to phase down the amount of USF support it receives by
9 20% per year beginning in 2009 until it is 0% in 2013.¹³ Therefore, Cellco, even if designated
10 eligible for ETC high cost support, will receive 60% of the support it is eligible to receive in 2010,
11 40% in 2011 and 20% in 2012.

12 Further, based on a recent ruling by the FCC¹⁴ in a Request for Review of Decision of
13 Universal Service Administrator by Corr Wireless Communications, LLC ("Corr Decision"), the
14 phased down support will not be returned to the state specific cap to be redistributed to the other
15 CTECs. Rather, it will be recaptured and be used as the base of a new broadband focused fund the
16 FCC has not decided how to distribute as of yet. 434, 2010 WL 3484249 (F.C.C.) at page 6.
17 Therefore, not only would the amount of money going to Nevada's other CETC decrease due to
18 Cellco adding access lines, but Cellco would only get a percentage of the funds to use for expanding
19 service and improving infrastructure, as its eligibility is being phased down, and that money would be
20 removed from the Nevada cap, permanently lowering the amount of federal high cost USF support
21 available to serve the citizens of Nevada.

22 In 2013, all Cellco support will be lost because the phase-down will be complete. When the
23 federal support is phased-out for Cellco, it is not redistributed, leaving federal support equal to the
24 amount paid to the remaining CETC. The remaining CETC may require additional funding to

25 ¹³ See Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer
26 Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition
27 for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Communications Act, 23 FCC
Rcd 17444 (2008)

28 ¹⁴ IN THE MATTER OF HIGH-COST UNIVERSAL SERVICE SUPPORT FEDERAL-STATE JOINT BOARD ON
UNIVERSAL SERVICE, 51 Communications Reg. (P&F) 434, 2010 WL 3484249 (F.C.C.).

1 continue operations in Nevada which, if the federal fund allocation to Nevada is permanently
2 lowered, can only be obtained from the Nevada fund to maintain the availability of telephone service
3 ("NUSF¹⁵"). If funding is granted from the NUSF by the Commission, this amount must be collected
4 from Nevada telecommunications providers, which increases the cost of services to Nevada's
5 customers. The impact of a shift of support from federal to the state high cost pool (NUSF) has a
6 greater impact since the cost for that support is collected from Nevada telecommunications users
7 instead of from users across the entire country.

8 **c. The Unique Advantages and Disadvantages of the Competitor's Service Offering**

9 Concerning the advantages and disadvantages of Cellco's service offering, Staff agrees that
10 Cellco offers a quality product to Nevada customers. However, they have been doing so for years
11 without support, and there is nothing in the Application that indicates that they will increase services
12 offered or in any way enhance the services they have been providing if they are able to receive
13 federal support.

14 Even if Cellco does provide additional facilities and expand supported services in the next
15 two years it may receive federal funding, Staff must question if it is in the public interest to divert
16 funding to the Applicant in hopes it will efficiently invest the remaining support for the short period it
17 is eligible to receive support.

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26 ¹⁵ The federally funded USF is collected from all lines in the nation and distributed pursuant to the state-by-state
27 allocation devised by the FCC for competitive ETCs and distributed for incumbents on the basis of different kinds of high
28 cost support. The NUSF is funded only by Nevada ratepayers and is used to supplement federal USF support when the
federal support is not sufficient to meet the requirements of the ETCs. Nevada carriers seeking NUSF must apply on an
annual basis to demonstrate such need. Therefore, if federal USF support is lowered, a CETC could come this
Commission to request designation to receive NUSF. While the Commission has not yet been presented with the issue of
a request from a CETC for NUSF, the potential need exists if federal USF support were lowered.

1 **CONCLUSION**

2 Staff, at this point, recommends that the Commission deny the Application, for a number of
3 legal and policy based reasons outlined above. Staff is certainly willing to re-evaluate this
4 recommendation based on the responses to the pending data requests and other discovery, however,
5 at this point Staff believes the vehicle chosen is flawed and the Application should be denied.

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7 RESPECTFULLY SUBMITTED this 13th day of October, 2010.

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9 PUBLIC UTILITIES COMMISSION OF NEVADA

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11 By:


12 Samuel S. Crano, Assistant Staff Counsel
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PROOF OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by electronic mail to the recipient's current electronic mail address and mailing a copy thereof, properly addressed to:

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DATED at Carson City, Nevada, on the 13th day of October, 2010.



An employee of the Public Utilities
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